IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.52 OF 2006

Commissioner of Customs ..Appellant.

V/s.

M/s.Super Shopee ..Respondent.

Mrs.S.V.Bharucha with N.D. Sharma for appellant.

None for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 18TH JANUARY, 2007.

P.C. :-

Heard learned counsel for the appellant. Perused the order of the CESTAT as well as the order passed by the Commissioner (Appeals). In the order of the Commissioner (Appeals) dated 7th May, 2003 the following finding is recorded:-

> " I find that all the goods are freely importable, not notified and not covered by any prohibition and as such the onus of proving them to be of smuggled nature or non duty paid is on the department as per section 123 of the Act. In the case of Gunvant Lal Godawat (1998(99) ELT 332(T) the Tribunal has set aside the confiscation of Silver which are notified goods holding that - "The Department has not brought on record any evidence to prove that Silver was brought into country violating the restrictions or prohibitions of law and / or without payment of duty". In the impugned case also, I do not find that the department has discharged its liability to prove that the impugned goods were brought into the country violating the

restrictions or prohibitions of law or that the Customs duty was not paid on the impugned goods."

2. In view of the above, we do not find any substantial question of law involved in the appeal. Appeal is dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)